IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 6152 of 2006
Date of decision : 20.11.2006.

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Parties Name

Ashwani Kumar and another

..... Petitioners

vs.

Mohammad Farooq and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Jatin Talwar, Advocate
for the petitioners.

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S.N. Aggarwal, J.

The petitioners were the tenants in shop bearing No. 291-A/12, Panipat. The respondents claiming to be the legal heirs and successors-in-interest of Khawaja Zaki Ahmad, owner and landlord, filed the ejectment petition. The said ejectment petition was contested by the petitioners by taking the plea that Ram Lubhaya father of the petitioners was the tenant under its previous owners i.e. Mulana Liglaula, who died many years back. Said Mulana Liglaula was survived by Mohamad Alli-Phulla and other legal heirs and they have become the owners of the demised premises. It was denied if Ram Lubhaya, father of the petitioners or

after his death the petitioners ever remained tenants under the respondents. The ground of non-payment of arrears of rent was also denied.

Issues were framed. Thereafter the petitioners had absented and were proceeded against ex parte, while the respondents however, had led the evidence. The said ejectment petition was accepted by the learned trial Court vide order dated 13.5.1998 (Annexure P-2). The respondents filed the execution application in which the petitioners filed objections challenging the said order of ejectment. It was asserted by them that the decree holders were not the owners or landlords and order of ejectment in their favour was illegal. The objections have been dismissed by the learned Executing Court vide impugned order dated 25.10.2006 on the plea that the Executing Court cannot go behind the decree.

Hence, the present petition.

Learned counsel for the petitioners has drawn the attention of this Court towards the provisions of Section 47 CPC, as well as, Order 21 Rule 97 onwards. It was submitted that all the issues involved relating to the title etc. are to be decided by the learned Executing Court. He also placed reliance on the judgment of the Hon'ble Supreme Court reported as **N.S.S. Narayana Sarma and others vs. Goldstone Exports (P) Ltd. and others** (2002) 1 SCC 662.

This submission has been considered. It has no merits at all. The settled law is that the Executing Court cannot go behind the decree. Moreover, this very version was taken by the petitioners in

the ejectment proceedings but they failed to prove this version. Rather they absented from the Court proceedings and were proceeded against ex parte. The said ejectment order dated 13.5.1998 can be set aside, either on an application filed under Order 9 Rule 13 CPC or in an appeal filed before the Appellate Authority. Till that order of ejectment dated 13.5.1998 exists, the Executing Court has no other role except to execute the said order. If the petitioners have filed an application under Order 9 Rule 13 CPC, they could seek the stay order in the said Court, but these objections under Section 47 CPC or Order 21 Rule 97 etc. CPC are not maintainable. The petitioners cannot be granted liberty to prove the same version which they failed to prove in the main proceedings. Therefore, the petitioners are estopped by their conduct to rake up this matter in execution proceedings and these objections are barred under the provisions of Order 2 Rule 2 CPC.

Therefore, there is no illegality in the impugned order dated 25.10.2006 passed by the learned Executing Court.

There is no merit in the present petition. The same is hereby dismissed.

(S.N.Aggarwal)
Judge

20.11.2006.
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